either in pursuance of section 326 or 327 of the National Land Code.

I agree with the proposition that in such a case as the present where an Act of Parliament does not expressly specify in what form an application may be made to the court, as a matter of procedure it may be made in any form in which the court can be moved. There is no question that the court can be moved by originating motion. The passage relied on by Mr. Wong Soon Foh is taken from the judgment of Warrington J. in *In re Meister, Lucius and Bruning*,[2] in which the learned judge held that in Chancery cases the procedure usually adopted, where an Act of Parliament is silent as to the form an application might be made to the court, is by originating motion: In *Lim Kiat Moy* v. *Hamzah, supra*, I did not make a ruling that an application to remove a caveat must be by originating motion. No doubt that case was proceeded by originating summons but the validity of the procedure was never considered. It cannot therefore be said that that case creates a precedent on procedure.

It is not in doubt that the F.M.S. Land Code (Cap. 138) made no provision whatever for the necessary procedure to present a caveat. Part 19 of the National Land Code has remedied these omissions. Besides providing in detail for the incidents and effects of four distinct types of caveat — the Registrar's, the private, the lien-holder's and the trust caveat, it makes detailed provisions for the procedure to remove a caveat. In respect of a private caveat, the National Land Code provides three different avenues to different sets of people to remove a caveat. Section 325 declares that a private caveat may be withdrawn on the application of the person or body at whose instance it was entered. It further specifies the administrative steps to be taken by the Registrar to cancel a caveat. Section 326 enables the caveatee to remove a caveat on application to the Registrar who is obliged to take certain administrative steps to effect its removal. Any person aggrieved by the Registar's decision has a right of appeal to this court (section 418). Section 327 gives power to the court to order the removal of a caveat on the application of the party aggrieved by the existence of such caveat and it also enumerates certain administrative steps to be taken by the Registrar to effect its removal. From such decisions there is a right of appeal to the Federal Court.

It is therefore manifest that the three sections confer collateral rights to the different classes of persons for whose benefit they are designed. In my view it is fallacious to say that the right declared in section 326 is preliminary to that conferred by section 327.

For the above reasons, I overrule the preliminary objection.

Objection over-ruled.

Solicitors: *Chooi & Co.*; *Eugene Lye & Co.*

SUKUMARAN v. BUILDING CONSTRUCTION CO. (MALAYA) LTD.

[O.C.J. (Abdul Aziz J.) March 12, 1969]
[K.L. — Civil Suit No. 738 of 1966]

Negligence — Contributory negligence — Piling works — Surveyor standing in vicinity of boring machine — Struck by piping.

Damages — Loss of future earnings — 37 year old surveyor — Fracture of right tibia & fibula — Fracture of femur, scapula and ribs.

Damages — Leg — 1" shortening.

The plaintiff was employed by the defendants, a firm of building contractors, as a surveyor. He was struck by a piece of piping which fell from a boring machine. The plaintiff was not doing any survey work at the time of the accident. The defendants, while admitting negligence, alleged contributory negligence on the part of the plaintiff. In an action for damages arising from the accident,

Held: a prudent man who was not engaged in performing the work that he was employed to do would not stand where the plaintiff had stood at the time of the accident. By being in the danger area, he must be assumed to be aware of the risk, and had therefore contributed 50% towards the injuries that he suffered.

CIVIL SUIT.

H.E. Cashin for the plaintiff.

P.J. Mooney for the defendants.

Abdul Aziz J. (delivering oral judgment): This action for damages arose from an accident which occurred during the construction of the National Electricity Board Headquarters at Pantai Valley wherein the plaintiff suffered multiple injuries as a result of being struck by a piece of piping which fell off from a boring machine used by the defendant firm for piling work. The defendant, whilst admitting negligence on their own part, alleged contributory negligence on the part of the plaintiff also. The question for decision is, therefore, to what extent did the plaintiff contribute to his own injuries and what reasonable amount should in the circumstances be given for general damages.

The evidence disclosed that on the day in question two huge machines: one a boring machine and the other a piling machine, were in operation preparing the foundation of the building. With these two machines working simultaneously, it was suggested — and it is not difficult to imagine — that dangers to life and limbs were likely to emanate from the mov-

ing part of the machine alone, esepcially to those standing in the vicinity of these two machines. According to one independent witness, the place where the plaintiff was standing, which was to the right of the boring machine, was the most dangerous area of all as earth and extension pipings were being cast off in that directions. I agree that anyone who had occasion to be within the vicinity of these two machines will have to be extremely alert and to exercise extreme caution.

The plaintiff was employed by the defendant firm as a surveyor and his job required him to set up the pile position and to give the various levels during the process of piling. However, at the time of the accident, he was not actually doing any survey work. His surveying instruments were 150 feet away from where he was. According to an independent witness, the plaintiff, who was standing approximately 10 feet from the boring machine and 3 feet from the piling machine when the accident occurred, was at that time arguing with the contractor about the measurements of one of the piles. He was standing with his back to the boring machine. Just then, a piece of the extension pipe from the boring machine fell off towards the spot where the plaintiff and two other people were talking. Mr. DeCruz, who was one of the three, saw this accident; he yelled and ran away escaping injury. The plaintiff was struck down by this piece of pipe; as a result of which, he suffered various injuries, the main ones being:

(1) a compound fracture of the end of the right tibia and fibula involving the right knee;

(2) fracture of the shaft of the left femur;

(3) fractures of the 3rd, 4th, 5th, 6th and 7th left ribs;

(4) fracture of the neck of the left scapula.

As a result thereof and in spite of treatment, he suffered a foot-drop of the right foot, a condition which — according to the doctor — could be corrected by further surgery, but which the plaintiff refused to undergo. The left leg is shortened by 1". The movements of the knees are limited to 90°. He cannot walk long distances or remain too long on his feet. Neither could he run, squat or jump. In the opinion of the medical expert, he will no longer be able to pursue his profession as a surveyor because of these physical disabilities.

Both counsel are generally agreed on the several items of general damages. There is also not a great deal of difference in the quantum suggested for them. Some scaling down will, however, have to be done in respect of pain and suffering in view of the multiple injuries. Giving allowance for this and discounting the foot-drop, I would award $17,000 for pain and suffering.

For loss of earnings for 10 months during which he was incapacitated, both counsel agreed and I accordingly award $4,500.

As regards loss of future earnings, I took into account the following factors:—

(a) That plaintiff was 37 years of age. He is not a licensed surveyor, but possesses a surveying diploma from India. But for the accident, he is likely to work up to the age of 55, if not 60;

(b) That he was employed by the defendant firm on a month-to-month basis at a salary of $600 per month;

(c) That during the three years preceding the accident, he held four temporary jobs drawing salaries ranging from $450 to $750 per month.

From his past record, I would say that it is more likely that any job he is likely to hold, barring the accident, would also be temporary in character. Giving allowance for normal contingencies, I would say that a figure based on 12 years purchase for computation of loss of earning will be fair and reasonable. Also, his general scholastic qualification will still be useful for sedentary jobs despite his disabilities, but it may not offer him the same salary as before. I estimate the loss, therefore, to be approximately $150 a month. For loss of future earnings, I would award $15,000. Transport expenses claimed under special damages have been agreed at $330.

The extent of liability would depend on the circumstances of the case. The duty of care expected of the plaintiff is, in my opinion, not much less than that required of the defendant towards those engaged in the operation. The plaintiff must be assumed to be aware of the risk that he took by standing within a danger area and that any slackening of vigilance on his part might well result in injury to himself. On the evidence, I find that there was no necessity for him to be there at all at the time. As a prudent man, he should have chosen a much safer place for his conversation or altercation with the contractor. Had he been injured wihle he was actually engaged in surveying work, the position might have been different. For this reason, therefore, I would apportion the blame to the plaintiff at 50%. Consequently, there will be judgment for plaintiff for $18,415 with interest at 6% and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Skrine & Co.*